

Served: June 16, 1992

NTSB Order No. EA-3585

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 26th day of May, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation
Administration,

Complainant,

SE-10062

v.

ISAAC NEWTON BURCHINAL, JR.,

Respondent.

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, rendered at the conclusion of an evidentiary hearing on October 11, 1989.¹ The law judge affirmed the Administrator's order alleging that respondent violated sections 91.87(d)(3) and 91.9 (now 91.129 and 91.13, respectively) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 91).² The

¹An excerpt from the hearing transcript containing the initial decision is attached.

²The above-referenced regulations read as follows:

Administrator alleged that respondent acted carelessly when, while attempting to land the aircraft, he descended below the visual approach slope indicator (VASI) and came into contact with the ground short of the runway. The order called for the suspension of respondent's commercial pilot certificate for 60 days. The law judge affirmed the order, but modified the suspension period to 45 days.³ In his appeal, respondent claims that the law judge erred in finding that the failure to maintain a glide slope resulted in a violation of the aforementioned regulations. He also claims that the Administrator deliberately concealed probative evidence that could have exonerated respondent.

On July 30, 1988, respondent, acting as pilot-in-command of a Lockheed Model T33 turbine-powered aircraft on a flight
(..continued)

"§1.87 Operation at airports with operating control towers.

* * * *

(d) Minimum altitudes. When operating to an airport with an operating control tower, each pilot of -

* * * *

(3) An airplane approaching to land on a runway served by a visual approach slope indicator, shall maintain an altitude at or above the glide slope until a lower altitude is necessary for a safe landing.

However, paragraphs (d)(2) and (3) of this section do not prohibit normal bracketing maneuvers above or below the glide slope that are conducted for the purpose of remaining on the glide slope.

§1.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³The Administrator did not appeal the reduction in sanction. Thus, we need not address the issue.

in the vicinity of Addison, Texas, attempted to land at Addison Airport. The Administrator's complaint alleged, in part:

"3. During the above flight, while landing Civil Aircraft N648 at Addison Airport you hit the approach lights to Runway 15 approximately 1260 feet short of the displaced threshold and touched down approximately 57 feet short of the prepared surface (which is 1,037 feet short of the displaced threshold) of Runway 15 at Addison Airport. After touch-down, the nose wheel and left main gear impacted on the runway edge and collapsed. The aircraft damaged the runway and several runway end lights.

4. At the time of your landing, Runway 15 was equipped with a visual approach slope indicator which was operating.

5. During your approach, you did not maintain an altitude at or above the glide slope until a lower altitude was necessary for a safe landing."

Two eyewitnesses testified that the T33 appeared to be flying low immediately before landing. One witness, a police officer who had been driving on a road near the airport at the time of the incident, stated that the T33 seemed to be coming in lower than most aircraft that she had observed land at the airport in the past. A commercial pilot who was operating an aircraft in the vicinity of Addison Airport remarked that, in his opinion, the T33 was lower on its approach than it should have been.

We have reviewed the record, the arguments on appeal, and Judge Mullins' initial decision. The law judge adequately related the rationale for his decision and as a consequence we adopt his findings and conclusions as our own.

Respondent's argument on appeal that the Administrator, whether deliberately or inadvertently, concealed evidence is

wholly without merit and is not supported by the record. In addition, we reject respondent's assertion that FAR section 91.87(d)(3) applies only to flights conducted under instrument flight rules and thus did not apply in his case because he was operating under visual flight rules. The regulation is clear on its face and was not misinterpreted by the law judge.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's order is affirmed, as modified by the initial decision; and
3. The 45-day suspension of respondent's airman certificate shall begin 30 days after service of this order.⁴

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁴For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).